

F6mdhorc

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 IN RE: APPLICATION OF
4 HORNBEAM CORPORATION

14 MC 424

-----x

New York, N.Y.

June 22, 2014

2:07 p.m.

7 Before:

8 HON. VERNON S. BRODERICK,

9 District Judge

10 APPEARANCES

11 HOLLAND & KNIGHT LLP
Attorneys for Hornbeam Corporation
12 BY: JAMES H. POWER
SEAN BARRY

13
14 REED SMITH LLP
Attorneys for Symeou
15 BY: STEVEN COOPER
SAMUEL KADOSH
16 - and -
BRUCE S. MARKS

17
18 - also present -

19 FABRIZIO CAMPANILE
20
21
22
23
24
25

F6mdhorc

1 (Case called)

2 MR. POWER: Your Honor, may I also introduce another
3 individual?

4 THE COURT: Yes.

5 MR. POWER: This is Fabrizio Campanile. He is a Swiss
6 lawyer. He submitted an affidavit in support of this
7 application. He is here to answer any questions the Court may
8 have on what exactly is going on in the BVI and Switzerland,
9 because I think there were some significant amount of
10 representations made which are not accurate.

11 May he sit at the --

12 THE COURT: Sure, he may. Why don't you come up.

13 So I decided to have this hearing to address
14 Mr. Symeou's request for temporary relief. Pursuant to the
15 Rule 65(b), I could issue a TRO without notice but it would
16 have to be justified by immediate harm. I didn't see in the
17 application -- an immediate harm here would have been just a
18 matter of days, so I decided to have the hearing today to
19 discuss with the parties the various issues raised by that
20 request. You know, putting aside the more detailed application
21 that is being made, I just wanted to address the issue of
22 temporary relief.

23 Now, I guess, why don't we initially talk about what
24 the -- because I know when you were here before me, Mr. Power,
25 Mr. Barry, to obtain the relief to get the subpoenas, you did

F6mdhorc

1 indicate that I did take a look at the transcript that there
2 was going to be -- or you were contemplating filing an action
3 in Ohio. I believe you may have just indicated that was just
4 against the steel company, or you didn't necessarily limit it
5 but the reference was to the steel company.

6 But let me ask this. What is the status of the BVI
7 action, because that was the impetus behind your 1782 request?

8 MR. POWER: Yes, your Honor. In simple terms, we have
9 four other discovery requests outstanding in which we have not
10 served subpoenas. Earlier this year, Mr. Symeou indicated to
11 our client that the company was going to be sold basically to
12 insiders. They were going to be credit bidding their \$100
13 million, which is the case which we allege these are fraudulent
14 loans. They didn't occur. The full amount didn't happen.
15 This was -- as we explained in the ex parte hearing before your
16 Honor, the information that we were looking to get in part from
17 these correspondent banks was going to be used in the BVI to
18 establish that the money was never transferred into Warren
19 Steel, which is an element of the claims as described by our
20 expert affidavit by Mr. Michael Faye.

21 There has been an issue in the BVI caused solely by
22 actually Mr. Symeou's conduct. He has refused to change their
23 shareholders' register to reflect Mr. Shulman's company Bracha.
24 Hornbeam was a Panamanian entity. It was Panamanian entity
25 that wasn't owned or controlled by Mr. Shulman. It was owned

F6mdhorc

1 and controlled essentially by Liechtenstein trust lawyers. It
2 was a company that was created to simply hold in trust other
3 people's interest. And in this case it has held Mr. Shulman's
4 interest. Mr. Symeou knew it was Mr. Shulman that was the
5 beneficial owner.

6 Despite repeated requests, Mr. Symeou has denied
7 entering Bracha and/or Tectum or anyone else in the BVI.
8 Therefore, thus, they are themselves creating an issues which
9 is inhibiting an action in the BVI, because under certain
10 elements of the BVI clients, as outlined by Michael Faye, the
11 registered shareholder is the person arguably with the standing
12 to bring those claims. So in over the last six months there
13 has been a dispute between Mr. Fabrizio and Mr. Symeou to
14 actually register to reflect a change in the trustee holding of
15 Bracha and Mr. Shulman's shares.

16 So any delay in the BVI proceeding has been caused,
17 for one, by Mr. Symeou's failure to respond to the repeated
18 requests to change the registered shareholder from Hornbeam,
19 which simply was always holding Mr. Shulman's interest in
20 trust. It was never as its own interest because it is simply a
21 function of the entity to holdings and trust.

22 Secondly, in May -- I'm sorry, in March, shortly after
23 we served the subpoena -- and, remember, we have three other
24 1782s outstanding which at the time in March we had not yet
25 gotten a Delaware order and I believe we had just gotten a

F6mdhorc

1 Florida order. So we had not collected any other information
2 on any other action, which we intend, of course, to do. We
3 learned, by notification from Mr. Symeou, that the company was
4 going to be sold. This is Warren Steel, not the BVI company
5 Halliwell. That has nothing do with this. Warren Steel is the
6 sole asset of Halliwell. There was nothing that could be done
7 in the BVI to stop the sale of this Warren steel in the United
8 States.

9 Warren Steel, it was represented by Mr. Symeou that
10 the company was establishing a valuation and that
11 Mr. Kolomoisky, Mr. Bogolubov and the Optima entities would be
12 able to credit bid all their loans which were secured, despite
13 the opposition of Mr. Shulman to securitize those loans without
14 first establishing the validity of such loans. So as such, one
15 of the reasons why a BVI action has not been started yet is
16 because we went and we sought a TRO only in Ohio, not a
17 separate action, not a merits action, but a TRO to prevent the
18 sale of the Ohio Steel assets to these insiders while we
19 collect information to determine whether or not the very loans
20 in which they intend to credit bid were not procured by fraud
21 and in fact no consideration was ever paid.

22 We have made repeated requests of Mr. Symeou and
23 Mr. Korf, who is here in the United States, to simply disclose
24 the payments that were made underlying this hundred million
25 dollars of insider loans. These are related parties loans made

F6mdhorc

1 to Warren Steel, which our client has never seen any evidence
2 of, never seen any transactions. In other words, if somebody
3 were to say I lent this company a hundred million dollars, a
4 very simple and reasonable request would be, well, let me see
5 the transfer of the consideration paid for this security
6 interest for a hundred million dollars. It has been refused to
7 this date to provide any evidence of that. The only evidence
8 that has been provided has been self-serving, self-created
9 summaries of financial transactions of the company.

10 One of the things we were looking to get, and which we
11 did get, frankly, in New York from these intermediary banks, as
12 we have described it before your Honor, this is not sensitive
13 information of Mr. Symeou or sensitive information of Halliwell,
14 this was simply a record of transactions from Halliwell to any
15 other party referencing, as we said, Warren Steel or another
16 entity from Mr. Symeou to somebody else referencing Warren
17 Steel.

18 I can state for the Court, which I clearly stated to
19 Mr. Marks and to Mr. Cooper, that we received absolutely zero,
20 zero transactions of Mr. Symeou. Mr. Symeou is now before the
21 Court trying to prevent the disclosure of something which
22 simply isn't there. There are zero transactions provided by
23 any of the banks regarding Mr. Symeou. I explained that in
24 clear terms.

25 Secondly, there are six transactions of Halliwell.

F6mdhorc

1 Halliwell is an entity of which it is undisputed that our client
2 owns one third of the shares in. There are six transactions of
3 Halliwell. Those transactions are, in our opinion, quite
4 suspect. I won't read it into the record now. Depending on
5 what the court is going to order, I wouldn't want to have this
6 information further disclosed.

7 Secondly --

8 THE COURT: Well, let me ask you this. Just in
9 connection with the filing of the Ohio lawsuit, was any of the
10 information that you obtained from the subpoenas used in
11 connection with the Ohio lawsuit?

12 MR. POWER: Absolutely not. Not one shred of
13 evidence, which I also indicated to Mr. Cooper and to
14 Mr. Marks -- and, in fact, I asked them to please disclose to
15 me -- they made representations to this Court that we used
16 evidence, and, in fact, that is one hundred percent false. We
17 used no evidence whatsoever. So I am still perplexed as to how
18 they can make that representation to the Court. Either it was
19 knowingly false or recklessly made because we did not use any
20 evidence whatsoever of any of the transactions that we received
21 from the New York banks.

22 THE COURT: OK. And I take it that in connection with
23 Mr. Symeou's request for temporary relief, do you object to all
24 of the aspects of their request?

25 MR. POWER: No. In fact, we actually -- the first

F6mdhorc

1 email that I got -- and I would also like to clarify for the
2 Court for the timing. It's interesting because in the middle
3 of May, Mr. Fabrizio actually reached out to Mr. Shulman's
4 lawyer, Mr. Marks. Mr. Marks had represented Mr. Shulman prior
5 in a litigation involving this Warren Steel plant.

6 Mr. Fabrizio -- Mr. Campanile actually asked Mr. Marks
7 certain inquiries regarding the very transactions involving
8 this case. Mr. Marks did not say, oh, hey, by the way, we were
9 aware of this New York 1782. Do not use any information. I
10 want to let you know we know about this action. Can we talk
11 about a protective order? It was silent for three weeks, until
12 June 8th, when I got a threatening email that this was an
13 emergency and we had to run to court.

14 So at the time on June 8th, I indicated, in writing,
15 we would be happy to come up with a protective order. We don't
16 have any information for Symeou. To the extent we have
17 information for anyone else which you aren't representing, we
18 are happy to enter into a protective order such that it will
19 allow Mr. Symeou, to the extent he has standing, to argue why
20 any information of these other entities not related by any of
21 the counsel sitting behind me could not be used in a BVI
22 proceeding.

23 Secondly, we stated that despite no evidence from
24 Symeou, we have not used any evidence, any information, any
25 Warren transfer in any way, shape or form in any proceeding

F6mdhorc

1 anywhere in the world, including in Ohio.

2 So I am happy for this Court -- I even suggested a
3 briefing schedule -- to have both parties. I take it there are
4 issues that Mr. Symeou's counsel believes need to be addressed.
5 I think they are actually settled in this district, but,
6 nonetheless, this is the issue: Is notice required of a
7 nondeposition in a 1782 action? And, in fact, case law seems
8 pretty clear that unless it is a deposition or unless it is a
9 criminal case, no notice is required until such time as where
10 you at least have to give a party opportunity to be heard.

11 In fact, the Southern District has granted 1782 orders
12 stating expressly that notice did not have to be given. So,
13 you know, there is precedent here.

14 But we can deal with these issues. I think these are
15 interesting issues. I think the parties, I suggested that they
16 would have 30 days to come up with a brief while we would not
17 do anything. We wouldn't file a foreign action. We wouldn't
18 use the information -- not that we have used it, but we do
19 agree that Mr. Symeou would have ample time to brief the
20 action, and I suggested, I think, 20 days after that. As
21 opposed to coming into the court on an emergency basis, which
22 if it was an emergency basis, Mr. Marks would have disclosed to
23 Mr. Campanile back in May, when Mr. Campanile reached out to
24 Mr. Shulman's former attorney Mr. Marks, that this was such an
25 emergency and that we had to prevent the disclosure, use of

F6mdhorc

1 this information, or we would have certainly offered up a
2 protective agreement even earlier on.

3 So I am in favor of limiting the use of this
4 information, not that it has been used and not that we are
5 ready to use it at this exact moment, but certainly we are
6 happy to entertain that and willing to work with counsel to
7 come up with a reasonable protective order.

8 THE COURT: OK. So just as I understand with regard
9 to the BVI action, because you haven't been able to somehow get
10 a recognition that the name has changed -- in other words, the
11 entity holding the interest has changed, you haven't been able
12 to file an action in the BVI?

13 MR. POWER: Yes. And, also, we are waiting for
14 information. As I said before, your Honor, we did obtain not
15 just from this court but from Ohio, from Delaware and from
16 Florida, similar 1782 orders. We have not served those yet.
17 They are going to be served on Mr. Korf, who is the chairman
18 and president of Warren Steel, though he operates his
19 businesses out of Florida. They are going to be served on
20 Mr. Korf and the Optima entities. These are the entities which
21 say they lent \$100 million to Warren Steel yet provide no
22 evidence of any transaction supporting that, and they are going
23 to be served on Warren Steel itself out of the Ohio action.
24 And, in fact, the Delaware action is somewhat repetitive
25 because Warren Steel is a Delaware entity and some of the

F6mdhorc

1 Optima entities are Delaware, so we figured they would possess
2 the records there.

3 One of the reasons we were waiting -- and this is a
4 matter of public record -- the Delaware Court asked us to amend
5 our application. We refined it. We had to use local counsel.
6 So it did take quite some time. I don't know the exact date
7 that Delaware issued the order, but it was literally right on
8 the heels of when Mr. Symeou sent an email to Mr. Fabrizio
9 stating that they were marketing this Warren Steel plant for
10 sale, including a credit bid to these inside lenders.

11 At that point in time, faced with, one -- secondly, we
12 did not need any of the information in the United States to
13 file a TRO. We knew a TRO was going to be necessary. So about
14 March or the middle of March -- Mr. Campanile can advise the
15 Court of the exact dates; he was an actual participant in these
16 changes -- it was made very clear that action in the United
17 States to stop the sale of the company to insiders had to be
18 taken. That is not the same action that is going to be brought
19 in the BVI, a 184(i) shareholder sort of shutout suit.

20 Again, we do not intend to bring the action until we
21 gather all this evidence. I mean, one can -- you know, we are
22 not BVI lawyers here, but BVI law isn't so far afield from
23 common sense that if you are going to bring a BVI action
24 arguing that a consideration of \$100 million was not paid to
25 Warren Steel for these loans, it would be very easy to gather

F6mdhorc

1 this information in the United States, where it is collected,
2 and to present that in the BVI. So until such time as we get
3 that information, we won't be bringing a case in the BVI,
4 because that is the fundamental evidence that is going to be
5 submitted.

6 I mean, if Mr. Symeou wants to present this to us
7 without going through these hundreds of thousands of dollars in
8 1782 actions, we will be happy to get the records that we have
9 been asking for for more than a year now. It actually might
10 even be two years, as Mr. Campanile's exchanges with Mr. Symeou
11 appear to have been going on for quite some time requesting
12 these records.

13 THE COURT: OK. Will, let me hear, because as I
14 understand it, Mr. Power, you will be amenable -- this material
15 has not been used in connection with the Ohio action or any
16 other action. Has it been shared with third parties? And by
17 "third parties" other than your client who may have seen it or
18 folks at your law firm. Has it been shared with others?

19 MR. POWER: No, your Honor, other than myself,
20 Mr. Barry here, Mr. Campanile, one of his other legal team,
21 Tatiana has seen it as well as the client, Mr. Shulman, and one
22 of my paralegals.

23 THE COURT: OK. So as I understand it, you haven't
24 shared it with others, you haven't used it in the Ohio action.
25 You would agree during pendency of the matter here and the

F6mdhorc

1 briefing that is going to occur not to utilize it and you would
2 agree that whatever protective order language that the parties
3 would agree upon -- you know, putting aside whether or not
4 there is irreparable harm here or, you know, I don't know is
5 going to speak on behalf of Mr. Symeou, but it seems to me that
6 that would resolve the issue with regard to -- well, let me
7 hear from you with regard -- are you going to speak,
8 Mr. Cooper?

9 MR. COOPER: Yes, your Honor. Thank you.

10 Your Honor, I believe that you have not been given the
11 full picture of what's going on here. I think you have been
12 told a lot of half-truths and some misleading information.

13 THE COURT: I'd like to -- and I'm not going to
14 prevent you from that, but I want to try and deal with and then
15 we can -- well, the issue of the temporary relief.

16 MR. COOPER: OK. The short answer is -- and then I
17 will elaborate on it -- the information has been used there.
18 They have admitted it. There is no logical reason that they
19 started this case when they did except that they -- the only
20 intervening factor was that they got a bunch of information and
21 we found out about it around June 8th. And then when we asked
22 them whether they were going to file in the United States, they
23 put us off and they told us we'll let you know if we decide to
24 do that. We got a whole bunch of misleading nonresponses, and,
25 lo and behold, on the following Sunday we get told they're

F6mdhorc

1 moving in Ohio.

2 They made it very, very clear to you that 1782
3 application was in support of foreign proceedings. They told
4 you in their brief each and all of the reasonably contemplated
5 actions will similarly be brought before courts in the BVI or
6 elsewhere which are likewise considered foreign tribunals
7 within the meaning of 28 U.S.C. 1782. They said the same thing
8 in the transcript and --

9 THE COURT: But in the transcript they did indicate
10 there was going to be something filed in Ohio.

11 And just let me ask, what information do you have
12 that -- I mean, are you suggesting that Mr. Power's
13 representation here is not accurate with regard to the Ohio
14 action, that this information was, in fact, used?

15 MR. COOPER: Correct. On that reference that you are
16 making, first of all, in the use in the Ohio action, I saw the
17 same thing and it caused me to pause, too. But I don't think
18 that that's what they are referring to because -- and I believe
19 Mr. Powers actually confirmed it. They are not talking about
20 bringing a plenary action or injunctive action. They are
21 talking about bringing another 1782 action, which is what they
22 did in Ohio, Texas and Delaware. There is no indication, other
23 than that one line, that they plan to use any of the material
24 and to commence anything domestically. Everything is foreign.
25 It is up and down in their papers, and they are very emphatic

F6mdhorc

1 about it, your Honor.

2 MR. POWER: Your Honor, may I clarify something --

3 THE COURT: Sure.

4 MR. POWER: -- so we don't go in circles on this?

5 Mr. Cooper is right, we did not -- we couldn't have
6 contemplated filing a TRO action in Ohio back in December of
7 2014 when Mr. Symeou didn't disclose to Mr. Fabrizio Campanile
8 until the end of March that they were about to sell the company
9 in Ohio to the insiders. So, I mean, to state that I foresaw,
10 I had a crystal ball that in five months after I came and
11 represented to your Honor, under oath, statements that I take
12 very personally and that we have every intention then and I
13 would say every intention now to file in the BVI.

14 However, how convenient for the defendants that they
15 would go and sell the company to their insiders while we are
16 going and undergoing litigation in the BVI. And once that's
17 done, your Honor, and which is what I represented to the Court
18 in Ohio, who was more than happy to grant the TRO because it
19 saw that we met our burden, in no way, shape or form did we
20 come to your Honor back in December of 2014 with the intention
21 of using any information here or in any other 1782 in this TRO
22 action in Ohio, which we just brought, which we didn't know
23 about or didn't feel the need to even consider until such time
24 as Mr. Fabrizio got indications from Mr. Symeou at the end of
25 March.

F6mdhorc

1 I mean, Mr. Fabrizio is here. I mean, I brought a
2 live witness to let the Court know the dates. Counsel for the
3 defendants I think is simply playing telephone and doesn't have
4 the right dates and the right story. I brought a witness here
5 to tell the Court the right story, if the Court wants to listen
6 to the dates, and when we contemplated the BVI proceedings and
7 when we contemplated to bring the TRO in Ohio.

8 THE COURT: OK. Mr. Cooper.

9 MR. COOPER: So we've established, your Honor, that
10 when they came to you, they only said they were going to bring
11 foreign proceedings. OK? So they never indicated this.

12 Now, if you look at their petition to you, their
13 original application, and look at what they envision are going
14 to be their claims, they indicate three different actions with
15 a host of parties, all in foreign jurisdictions, and then you
16 look at the complaint they filed in Ohio, it is essentially the
17 same. It is the same language.

18 THE COURT: But, again, you are seeking temporary
19 relief, extraordinary relief from me, asking me that these
20 materials should be turned over to you, that names of people
21 who I understand that they haven't -- according to what I've
22 heard here today, it hasn't been turned over to third parties.

23 What evidence do you have that the materials were used
24 in connection with the Ohio action? And, secondly, why isn't
25 this a discovery issue that should be dealt with by the Ohio

F6mdhorc

1 judge?

2 MR. COOPER: Your Honor, there are very fundamental
3 issues of due process here that I really need to address with
4 your Honor. I want to answer your narrower question first on
5 what evidence did we have.

6 May we hand something up, your Honor?

7 THE COURT: First of all, what is it?

8 MR. COOPER: It is an affidavit that was submitted in
9 Ohio of Mr. Campanile.

10 THE COURT: OK. Go ahead.

11 MR. COOPER: So if you look at page 37, your Honor,
12 paragraph 164, after a long recitation of his perception of the
13 history and the facts, he deals with this issue because I guess
14 he knows it is going to arise that they've gotten all this
15 information through 1782, and I guess he wants to preempt it.
16 So he says: "Discovery proceedings pursuant to 28 U.S.C. 1782
17 have been filed in the United States discovery application on
18 behalf of Shulman's entities Bracha and Hornbeam solely seeking
19 evidence for use in the BVI and other foreign proceedings, as
20 described in those various applications. Those limited
21 discovery proceedings have absolutely nothing to do with this
22 proceeding, and other than the existence of Warren Steel bank
23 accounts not previously identified by Symeou, no information
24 whatsoever received will be used in this proceeding in support
25 of the accounting and injunction."

F6mdhorc

1 So, yes, other than the fact that they supposedly
2 discovery Warren Steel bank accounts, plural, there is nothing
3 else. Now, we don't know exactly what that is. We haven't
4 seen any of the documents. But they took this information and
5 they used it in Ohio.

6 And it's also confirmed, your Honor, by Mr. Power,
7 who, when we were going back and forth about this issue and
8 asking for the subpoenas and asking for the information, just
9 spontaneously told us -- it's Exhibit 39, your Honor, in our
10 materials, it's an email from him. He's talking about the
11 protective order and the schedule, and then he says: "It is
12 interesting to note, however, that the wire transfer records
13 obtained identify an account" -- he says one account;
14 Mr. Campanile says accounts, plural -- "of Warren Steel at
15 Regents Bank. This account had been vaguely referenced as part
16 of incomplete and conflicting document disclosures by Symeou
17 prior to the New York 1782 application. However, it was again
18 indirectly identified by Mr. Symeou during the extraordinary
19 general meeting EGM in Cypress in March. Despite repeated
20 demands for Warren Steel's Regents' records reflecting the
21 transfers of more than 80 million in purport loans, Mr. Symeou
22 has continued to stonewall the turnover of such records."

23 So not only is Mr. Campanile indicating that that
24 material is used, Mr. Power found it so noteworthy that despite
25 no solicitation of that information, he mentioned to us, oh, by

F6mdhorc

1 the way, we found an account of Warren Steel at Regents Bank.

2 Now, is this the extent of what they have used? I
3 don't know; we don't have it. They clearly have used some
4 material. And, your Honor, respectfully, they knew about the
5 potential sale of this business on March 31 of this year. Now
6 it's June 22nd. They bring this TRO in Ohio a week ago. Your
7 Honor, the only intervening factors were they got the
8 information and then we learned of it, and they misled us and
9 they rushed to court in Ohio.

10 There is no question, your Honor, if you want a more
11 full-blown plenary hearing on it with witnesses, we can do it.
12 But there is no question that this and their Ohio papers
13 support this idea. There was nothing urgent and immediate that
14 led to this.

15 And this is not a different kind of action from the
16 one in the BVI. This is the same thing they brought before.
17 This the same thing they told you they were going to bring
18 again. This is essentially as Mr. Power says in his papers, a
19 dispute among three shareholders and two of whom control it.
20 They went to the BVI. It was -- they did not lose or withdraw
21 because of a lack of transparency, like he told you in his
22 papers; they lost on the merits. The judge characterized what
23 they did as an abuse, and they were sanctioned over \$800,000.
24 That explains why before they even came to you they transferred
25 the shares from Hornbeam to Bracha and they sought to dissolve

F6mdhorc

1 Hornbeam before they came to you. They told you they were an
2 interested party before they came to you, and they did that
3 because they don't want to pay their sanction award and they're
4 not going to go back to the BVI because they can't go back to
5 the BVI because they have to pay the sanction award before they
6 can bring the action.

7 So what they did is they came to you, they got 1782
8 relief, and they used that information in Ohio. OK?

9 Point one.

10 THE COURT: But don't you concede that -- I mean at
11 the time -- I mean, I guess, are you saying that at the time
12 they were planning on using the 1782 materials in Ohio?

13 MR. COOPER: They were never planning to bring a
14 foreign action. And the proof is in the pudding because they
15 brought the same action -- the same action that they described
16 to you on page 2 of their application in Ohio. OK? So that
17 was a false pretense that they used to get it. They didn't --
18 nothing changed. They used that information in Ohio.

19 But that wasn't the only false pretense. If I can go
20 on?

21 THE COURT: Well, let me ask this. Look, I guess what
22 I am trying to get at is I just want to deal with the issue of
23 temporary relief here. What is the irreparable harm? As I
24 hear Mr. Power, he is willing to enter into a protective order.
25 He is not going to use it anywhere else. What the irreparable

F6mdhorc

1 harm to your client?

2 MR. COOPER: The only thing Mr. Power offered today
3 and offered last week was he would give us documents that
4 concern Mr. Symeou. OK? This is a due process -- a number of
5 reasons there is irreparable harm. First of all, there is a
6 due process violation. The cases are clear that even though
7 you get ex parte relief under 1782, you have to serve the
8 subpoenas on all the target parties. The Second Circuit case
9 Gushlak, which we cite to you, and under Rule 45, we were
10 supposed to be provided notice of the subpoenas as the targeted
11 party and we weren't.

12 THE COURT: Well, again, on the issue of temporary
13 relief, you know, I'm all for you guys briefing this thing to a
14 fare-thee-well on the issues that you are raising with regard
15 to your due process rights and whether or not they have been
16 violated. But with regard to your request to get immediately
17 immediate relief --

18 MR. COOPER: Two other points. First of all, Mr.
19 Power said the only people who have seen it are the people at
20 his firm and his client. I don't know who his client gave it
21 to you. I don't know who it has been disseminated to by his
22 client. You are talking about almost ten years of wire
23 transfers involving many parties, over 20 parties, many of
24 whom, if not all of whom, have business dealings other than
25 Warren Steel. So essentially they have confidential sensitive

F6mdhorc

1 information regarding these clients that had nothing to do with
2 this case. We don't know where it has gone. We don't know
3 what it has been used for. And we are entitled to see it.
4 Confidential information, your Honor, is one of the primary
5 reasons that an injunction is appropriate.

6 You also have them moving for a TRO in Ohio. The
7 hearing is scheduled for Friday. We've seen already that they
8 have admitted and were not straight with you about using some
9 of the material they got. Your Honor, we don't know what else
10 they used. We don't know the extent to which this matter -- we
11 are entitled to, first of all, have them have a court order
12 declaring that they can't use it in Ohio and seeing the
13 subpoenas and seeing the material that they got. We are
14 entitled to it. Not just Mr. Symeou's, he is a targeted party.
15 He was identified as a potential target in the application to
16 you. As a result under, Rule 45 we are entitled to all the
17 subpoenas and all the documents, not limited to him. In a
18 case, you do not just produce documents related to that
19 particular client, you make full disclosure. And here you have
20 the precomplaint, ex parte discovery in a domestic action, and
21 it is just completely improper. And I think it was done to you
22 without you hearing the whole story.

23 These parties have litigated obviously for a while.
24 They know each other well. And despite clearly their knowing
25 each over and having the contact information, the option was to

F6mdhorc

1 come to you ex parte and go to all these other courts and never
2 notify us. And the only reason it ever came up is because
3 Mr. Marks, who represents one of the parties, happened to see
4 it in connection with something else he was working on. We
5 didn't even know about this for six months. And then when it
6 came to a head, bingo, the Ohio action started.

7 Given it is confidential, given we don't know who has
8 it, given the scope of it and given we have an Ohio action, I
9 believe it is very appropriate right now for us to see the
10 subpoenas, to see what they got, to see if in fact they are
11 being truthful that they didn't rely on other things, because
12 we just don't know. You don't have domestic proceedings where
13 one side has all the cards and the other party doesn't and you
14 have a TRO coming up where -- you know, this is just wholly
15 improper.

16 You retain jurisdiction over this issue. This was
17 your order. You are certainly entitled to limit it now that
18 you have -- and you even say in your decision, first of all,
19 that you reserve the right to look further at this and you
20 reserve the right to hear motions to quash. How can you hear a
21 motion to quash if the party hasn't gotten a copy of the
22 subpoena?

23 THE COURT: Well, it wouldn't be the motion, it would
24 be the banks themselves who the subpoenas are against.

25 MR. COOPER: The case law is clear that we are an

F6mdhorc

1 affected party, and as a target we are entitled to see the same
2 material, your Honor.

3 THE COURT: Again, I'm not -- well, let me hear from
4 Mr. Power and then I will have some additional questions.

5 MR. POWER: Your Honor, I think it's been three times
6 now you asked Mr. Cooper and Mr. Symeou's counsel to identify
7 what information was used in Ohio. He has yet to be able to do
8 that.

9 Again, I take serious issues that without any evidence
10 or without -- he has had our Ohio pleadings for quite sometime
11 now, you know. And everyone who is in that firm is equipped
12 with a highlighter and a pen to go through the Ohio pleadings
13 and identify what we have used. We have used nothing, your
14 Honor, not one thing.

15 Now, if Mr. Cooper is telling this Court, OK, that it
16 is so secretive that the fact we've seen evidence of an Ohio --
17 a Regents Bank account of Warren Steel, the very entity in
18 which our client owns one third and they're saying even that,
19 that is so sensitive, the fact that there is an actual bank
20 account, Warren Steel, that you now know of, that that can't be
21 used, you have to wipe your memory clean of knowing that there
22 is a bank account, which, again, as I said, that bank account
23 was identified very, I say, in not a very open and frank manner
24 by Mr. Symeou before. In other words, they did a summary of
25 accounting and they said that Warren Steel has a bank account

F6mdhorc

1 at Ohio.

2 We now know the bank account number, your Honor. Big
3 deal. We didn't use the bank account number in Ohio. So to
4 suggest that the knowledge of a bank account of the very entity
5 in which we sought a TRO -- and, again, the TRO had nothing to
6 do with the bank account, it had to do with transferring the
7 assets to themselves.

8 So, your Honor, there is nothing that we've used. And
9 the fact that we knew that there was a Regents Bank account, it
10 was confirmed in the wire transfer of, again, from Warren
11 Steel's Regents Bank account which disclosed the bank account
12 number, which, again, we didn't use in any way, shape or form
13 in Ohio. And I'm also told by Mr. Campanile that Mr. Symeou
14 informed Mr. Campanile in August of 2014 about the existence of
15 a bank account at Regents Bank.

16 So this is not at all, as Mr. Cooper suggests, such
17 sensitive secret information that the Court has to use
18 extraordinary relief to prevent a one-third shareholder who
19 invested \$60 million and is simply actually trying to get the
20 very records of this Regents Bank account of Warren Steel, to
21 say that that is precisely the information that, you know, is
22 of such a secretive nature that Mr. Symeou has to protect all
23 these other parties who he is representing now in form, not
24 officially, but from -- you know, from further dissemination
25 or, you know, God forbid the public or somebody knows that

F6mdhorc

1 there is a Regents Bank account of Warren Steel. You know,
2 that is not at all information which one needs to protect,
3 first of all, or that was sought from this 1782 action.

4 So, again, I state that the Court asked Mr. Cooper to
5 identify with specificity what he believes we used, what
6 information we used, and there isn't any. In fact, again,
7 there are no records whatsoever, not one wire transfer
8 referencing from, to, or referencing Mr. Symeou. You know, if
9 any of these other individuals thought this was so important,
10 they would have hired counsel to come and appear on their
11 behalf.

12 So, you know, I don't see that the request being made
13 by Mr. Cooper rise to the level that would require any kind of
14 Court intervention other than agreeing to a protective order,
15 which we have agreed to. So I don't think there has been this
16 vast rogue disclosure of anything.

17 And, in fact, Ohio, as we contemplate, we started
18 preparing that TRO for quite some time, interestingly enough,
19 despite Mr. Cooper's representation, before it was filed. It
20 was quite a significant undertaking. So it was well before
21 even Mr. Marks said he stumbled upon some blog that referenced
22 this case. So that Ohio action was in the works as soon as
23 Mr. Symeou disclosed to Mr. Campanile that they were intending
24 to credit bid and sell Warren Steel's assets.

25 THE COURT: OK.

F6mdhorc

1 MR. COOPER: Your Honor, can I just --

2 THE COURT: Sure.

3 MR. COOPER: I think it is important.

4 THE COURT: And, also, to this point, I understand the
5 reference to the bank account. Was that in fact -- Mr. Cooper,
6 is that reference in the complaint? In other words, is this
7 Regents Bank account reference in the complaint?

8 MR. MARKS: Your Honor, if I may?

9 THE COURT: Yes.

10 MR. MARKS: I am the one who is involved in the Ohio
11 proceeding, which is not simply an injunction, as Mr. Power
12 represented, it is for damages. It is a full plenary suit to
13 get damages for what they incurred. They have an expedited
14 request to produce documents which references Regents Bank.

15 THE COURT: I'm sorry. You've made a request that
16 they produce --

17 MR. MARKS: No. They have. Your Honor is asking what
18 has the Shulman side done, OK, to use this information in
19 addition to what Mr. Campanile admitted in his affidavit that
20 was filed in Ohio, and you asked about Regents Bank, right,
21 your Honor?

22 THE COURT: So you're saying their knowledge of the
23 Regents Bank, although not in the complaint, is something that
24 they utilized to create a discovery request?

25 MR. MARKS: They filed a motion for expedited

F6mdhorc

1 discovery filed in Ohio, and it seeks discovery related to
2 Regents Bank.

3 THE COURT: OK.

4 MR. MARKS: So not only is there -- again, I will let
5 Mr. Cooper speak, but there is not only the admission in
6 Mr. Campanile's affidavit that they used the information from
7 the discovery that your Honor authorized in which they
8 uncovered information about Regents Bank, and they took that
9 information and put it as a basis for their discovery request.

10 THE COURT: OK.

11 MR. MARKS: So there is a clear -- I'm going to sit
12 down, but there is a clear use of that information in Ohio.

13 THE COURT: Has your client previously disclosed the
14 existence of the Regents Bank even if he had not disclosed the
15 specific account number?

16 MR. MARKS: Your Honor, I don't know that, but it's
17 clear what happened is that that's the bank that received
18 the -- which they would know, that's the bank that would
19 receive the wires for the loans. And so, therefore, they
20 learned that information -- or they took the discovery that
21 your Honor authorized, they learned the information that this
22 is the recipient bank, as opposed to other banks, and then they
23 used that information to target their expedited discovery
24 request in Ohio -- a clear use of what they learned. They
25 didn't ask for information regarding ten banks, right, your

F6mdhorc

1 Honor? They narrowed their request to the bank -- the Regents
2 Bank because they learned of the role that it played as a
3 result of what we believe that they discovered, which is why
4 Mr. Cooper said, your Honor, you know, all we're asking for --
5 which is no burden to them, all we're asking for is the
6 subpoenas that have been served on the banks, and we're asking
7 your Honor to order them to turn over the discovery that they
8 got. We don't know what they have. So we know, because
9 Mr. Campanile admitted in his declaration, that they used the
10 Regents' Bank stuff. But we can't police what they're telling
11 us, your Honor, unless we know what they received.

12 As your Honor well knows, in any proceeding in the
13 United States, if you serve a subpoena, the discovery that's
14 responsive to the subpoena is produced at a time and a place,
15 under Rule 45. It is a mandatory requirement, and then both
16 sides go to the production. They can inspect it and they can
17 copy it. We were denied that fundamental opportunity to see
18 what they got.

19 I know, your Honor, in practice people say to each
20 other, hey, we're not going to make the bank bring this to
21 Holland & Knight so that you can come and inspect and copy it.
22 Attorneys on both sides communicate with each other, and they
23 say to the bank email it to both of us, email it to one of us
24 and we'll copy it, but you don't get to do it secretly and
25 that's the information that we need to get.

F6mdhorc

1 THE COURT: Have you made discovery requests in the
2 Ohio action?

3 MR. MARKS: No, your Honor. The first that we learned
4 of the Ohio action was your Honor may remember that on I
5 believe it was Wednesday or Thursday of last week, your Honor's
6 clerk said that -- I'm sorry, Wednesday -- that you would be
7 available either -- I'm sorry either Monday of this week or
8 what's -- I'm sorry.

9 THE COURT: Friday. Thursday or Friday.

10 MR. MARKS: But the answer is no, your Honor. We only
11 learned about it when I got an email on Sunday of last week
12 where your Honor was available Monday of last week, right?

13 THE COURT: Yes.

14 MR. MARKS: So Mr. Power said he wasn't available but
15 never told anybody that the reason he wasn't available was
16 because he was going to email me pleadings, draft pleadings on
17 a Sunday and then go into the court in Ohio the next morning.

18 THE COURT: I guess my question is, as I heard, there
19 is a hearing on Friday.

20 MR. MARKS: There is a TRO hearing, yes, regarding our
21 papers.

22 THE COURT: Am I correct that the discovery -- is the
23 discovery requested in advance of that hearing or --

24 MR. MARKS: They requested it but the Court, the Ohio
25 court -- your Honor, I was answering the question is there a

F6mdhorc

1 linkage of their usage with Regents Bank, and I believe I
2 established a clear usage, because that was the bank that they
3 targeted in their expedited discovery request. The Ohio court,
4 your Honor, did not grant that request.

5 THE COURT: OK.

6 MR. MARKS: That's been put off to a time, I suppose,
7 they --

8 THE COURT: OK.

9 MR. MARKS: But I did want your Honor to see how it
10 was used there.

11 THE COURT: Yes.

12 MR. POWER: Your Honor, I think what's interesting in
13 this case is despite repeated requests to Mr. Symeou, he has
14 not identified any bank of Warren Steel other than the Regents.
15 Bank, which he identified well in advance of when we applied
16 for the TRO.

17 So it's interesting that Mr. Marks said we only
18 referred to the Regents Bank of Warren Steel when in fact the
19 only evidence we have both before, now, and I'm sure in the
20 future is going to be this one bank account. So you wouldn't
21 target multiple bank accounts when to your knowledge it only
22 consists of it being one. So I think that, again, is a
23 misdirection.

24 The information hasn't been used in Ohio. It is not
25 going to be used in Ohio. There is no need for it in Ohio.

F6mdhorc

1 Just so the Court is clear what we've asked for in
2 Ohio and it has been a very simple request. It is a TRO. A
3 TRO has to be premised on something. What we did under Ohio
4 law, a TRO can be put in place and an accountant and a
5 receiver -- we have applied for a receiver. We are getting
6 nowhere with these defendants. We are going to spend hundreds
7 of thousands of dollars in every 1782 action that we have
8 sought here in the United States. They are going to fight
9 tooth and nail, and the rest of the subpoenas are going to be
10 on themselves.

11 Good luck getting the information from Korf. He is
12 going to fight it in Florida. In Delaware they are going to
13 fight it. So in reality, your Honor, this is a merry-go-round.
14 Every time we ask for something they refuse to provide it.
15 When we seek legal redress to get it, they say we are not
16 entitled to it.

17 Yet they say -- you know, again, our client invested
18 \$60 million. He has asked to identify the bank accounts of
19 Warren Steel so he can do an independent analysis. In Ohio, I
20 think it's very likely, and all we've asked in Ohio is that a
21 receiver be appointed, a receiver that is going to provide
22 information to Mr. Kolomoisky, Mr. Bogolubov and Mr. Shulman,
23 all three of the principals of this facility are going to get
24 honest, accurate, fair and legitimate reports of what is the
25 status of this company. That is the reason why we filed the

F6mdhorc

1 Ohio action.

2 And I don't think anyone here, again, unless they're
3 trying to hide the bank accounts, what's been going on, why not
4 let an independent person figure out what's going on with this
5 company so we can end this litigation, we can avoid hundreds of
6 thousands of dollars in further litigation in each one of these
7 other 1782 actions, which we haven't served yet, and we are
8 contemplating serving them soon because at some point, for
9 example, if in the Ohio action a receiver is not appointed, the
10 TRO isn't maintained -- and I think it will because I think the
11 Ohio Court sees what's going on here, but then, again, we
12 needed to stop the sale of the Ohio company to the insiders
13 otherwise the relief that we would bring in the BVI is going to
14 be without bearing any fruit.

15 THE COURT: OK. Just a quick question, Mr. Power.

16 Do you know -- this is an issue that Mr. Cooper had
17 raised a little bit earlier -- whether your client has provided
18 the information or documents obtained from the subpoenas issued
19 based upon my order to anyone else?

20 MR. POWER: The answer is, your Honor, I do not
21 believe that any disclosure has been made outside. My client,
22 as far as I understand, does not speak English. The
23 disclosures and if the cases were discussed with -- if the
24 information was discussed, it was, I understand, done through
25 who has already been disclosed, Ms. Tatyana in Russia. So I

F6mdhorc

1 can say to the Court right now there has been no representation
2 from the client that this information has been used anywhere
3 else outside of a very small group of people who gathered the
4 information.

5 THE COURT: So you don't believe it to be so but you
6 don't know for certain?

7 MR. POWER: Well, no one can ever know for certain.
8 The client has -- the client, we have said this information is
9 not for public disclosure, this is only for this case, this is
10 going to be used in a foreign proceeding, nowhere else. So as
11 with anything, you know, I have no reason to believe that my
12 client had breached the agreement that we had when we provided
13 this information for the client to assess.

14 THE COURT: OK.

15 MR. POWER: Much of this information, your Honor, by
16 the way, many of the entities that we named were also our
17 clients' own entities.

18 Now, I also find it disturbing that Mr. Symeou --
19 again, it is only Mr. Symeou who is here -- who is saying this
20 information is so important and sensitive that he has to be
21 able to see it. Mr. Symeou doesn't have any permission from
22 Mr. Korf, from Mr. Kolomoisky, Mr. Bogolubov. Why would Symeou
23 be entitled to see everyone else's information right now if in
24 fact --

25 THE COURT: After you are done, Mr. Power, I am going

F6mdhorc

1 to hear from Mr. Cooper and then I am prepared to make a ruling
2 on this particular issue.

3 MR. POWER: I think, your Honor, until we find out
4 ultimately whether Mr. Symeou -- the issue of standing, the
5 issue of notice, that in fact Mr. Symeou represents more than
6 just himself, which we've identified to the Court there is no
7 information on his behalf, anything more than a protective
8 order which will prevent this dissemination of this information
9 in any proceeding anywhere in the world by any of the parties
10 that has access to it I think is more than sufficient at this
11 point.

12 THE COURT: All right. Mr. Cooper.

13 MR. COOPER: Your Honor, you know, when I hear
14 Mr. Power talk, I feel like he is talking around the issue.
15 He's trying to make Mr. Symeou to be such a bad guy, he's
16 almost saying, oh, because he didn't give us this stuff, we're
17 entitled to do whatever we want.

18 What we are here to talk about today are the federal
19 Rules of Civil Procedure, not whether he believes on the merits
20 somebody is right or somebody is wrong. And for him to say he
21 doesn't understand why we are claiming or proving that
22 information was used in the Ohio proceeding when the client
23 sitting next to him put in an affidavit that said exactly that
24 is a little bit beyond belief.

25 Under the federal rules, you do not have trial by

F6mdhorc

1 ambush. You have full disclosure. You do not hide the ball
2 and make us guess how they used substantial discovery material
3 in their case. We do not have access to their work product.
4 All we know is there was absolutely no other justification for
5 filing that other than they got material and they said so.

6 And --

7 THE COURT: Is the company -- does your client
8 contemplate selling the company or not?

9 MR. COOPER: There is nothing imminent right now
10 and --

11 THE COURT: That's --

12 MR. COOPER: He could answer himself.

13 THE COURT: Mr. Marks.

14 MR. MARKS: I don't mean to double-team you, your
15 Honor.

16 THE COURT: No, that is OK. If one lawyer knows more
17 information, go ahead.

18 MR. MARKS: The answer is there was a general -- there
19 was a shareholders meeting. I represented -- Mr. Campanile
20 was one and there was representatives of Marigold Trust, which
21 is Mr. Bogolubov's entity, and Mr. Symeou, which is
22 Mr. Kolomoisky's entity. There was a shareholders meeting in
23 Cypress on March 31st of 2015, and they engaged an investment
24 bank called Sagent to market the plant. That is in what I
25 would call the nascent -- n-a-s-c-e-n-t, I know what the word

F6mdhorc

1 means but I have trouble pronouncing it --

2 THE COURT: Nascent.

3 MR. MARKS: That is in the nascent stages. They are
4 reaching out to identify and to talk and to communicate to try
5 to get bids from third parties to see if third parties are
6 interested in buying the plant, and that process, quite
7 naturally, then would set a market price for the plant. And
8 there is no plan at all to imminently sell the facility, and
9 that will be, needless to say, raised on Friday -- at all. And
10 they knew that.

11 Again, I don't want to get into the back and forth of
12 the merits of it, but that happened on March 31st. There is an
13 independent investment bank that's trying to organize this, get
14 proper, you know, closure forms. There is nothing -- that is
15 not imminent.

16 But let me let Mr. Cooper speak because I think the
17 issue he is focusing on is how Rule 45 works, and Rule 45
18 doesn't permit secret discovery.

19 MR. COOPER: Your Honor, to argue we're not entitled
20 to see this, we shouldn't see it, I mean, it just doesn't
21 comfort with anything about the federal rules. And besides the
22 general principles here, there are very serious credibility
23 issues. Even if they weren't credibility issues, we are
24 entitled to an open mode of discovery. That is the way it is
25 done in American courts.

F6mdhorc

1 But the credibility issues I've outlined today are
2 only part of them. When they came to you, the linchpin reason
3 they said they needed this discovery and what your Honor
4 rightfully relied on based on the record you have -- and I'm
5 reading from your decision -- is "The material Hornbeam seeks
6 to discover is potentially critical to those foreign
7 proceedings, because it is relevant to whether Kolomoisky and
8 Bogolubov controlled the related party or provided the funds
9 that the related parties loaned to Warren Steel." Then you go
10 on: "Evidence like that is material."

11 That was in December of this year. In October --
12 December of 2014. In October of 2014, in the very BVI
13 proceeding that they reference -- it is Exhibit 6 in our
14 appendix -- there is an affidavit from Mr. Korf, who is the
15 president of Warren Steel. He says, in paragraph 5.4: "These
16 operating losses have been met partly at least by further
17 borrowings. Given the financial position of Warren, it was not
18 possible to arrange commercial financing. The only parties
19 that were going to be prepared to lend further sums to Warren
20 were those already financially committed to Warren, who stood
21 to lose the sums committed if Warren were to fall and/or who
22 were sufficiently familiar with the Warren business to
23 understand that it could be a highly profitable business given
24 significant investment. At various times over the years,
25 inquiries were made to several commercial banks concerning

F6mdhorc

1 financing for Warren Steel, and no commercial banks were
2 willing to provide such financing.

3 "Accordingly, and as those acting for the ultimate
4 beneficial owner of Hornbeam have again been aware for some
5 time, a series of connected party loans have been provided to
6 Warren Steel to keep it running. To demonstrate that ultimate
7 beneficial owner of Hornbeam has been aware of these connected
8 party loans for some time, I refer, for example, to the email,"
9 and then he cites a couple of exhibits.

10 There was no issue before you regarding whether these
11 were related. This had been disclosed months earlier. If they
12 in fact wanted to bring an action because they had a lack of
13 transparency and didn't know whether they were related actions,
14 they knew on October 14th. It was admitted by Mr. Korf. They
15 could have amended in the BVI and brought the action then but
16 they didn't. They lost. They were assessed costs. And then
17 they came to you under the guise of they don't have enough
18 discovery in the BVI. We need to know this. And your Honor
19 unequivocally relied on that as the gravamen of your decision.
20 It was never a mystery.

21 THE COURT: All right. I am prepared to make a
22 ruling.

23 I think, at least with regard to -- and, again, I am
24 not making a ruling with regard to your ultimate potential
25 entitlement to receive these materials, but with regard to the

F6mdhorc

1 actual request for temporary relief, I think that the entry of
2 a protective order to maintain the status quo will be
3 sufficient with regard to that. Obviously, I am going to
4 address the merits once the parties complete their briefing of
5 the issue.

6 As I understand it, I will outline what I believe the
7 protective order will say and I will leave it up to the parties
8 to actually come up with the language and any additional
9 language they feel is appropriate to protect their respective
10 clients' interest.

11 The materials will not be utilized in any domestic or
12 foreign proceeding, litigation, arbitration. It will not be
13 disseminated to anyone other than counsel and the parties.

14 The parties are going to be directed -- and by "party"
15 I am referring to, Mr. Power, your client -- that it is not to
16 be disseminated. To the extent that your client does not have
17 a copy, if you intend to provide -- well, you shouldn't provide
18 your client with any further copies, and the use of the
19 material should be limited to the people -- the attorneys that
20 you mentioned earlier, and they should all be informed that
21 they are not to utilize it in any proceedings going forward.

22 Now, as I understand it, you do not -- well, even if
23 you did have an intent to issue some further subpoenas in
24 connection with my order, that you will refrain from doing that
25 at this stage until we can address the merits of the issue

F6mdhorc

1 raised by defendant, by Mr. Symeou.

2 Now, I will leave it up to the parties. I don't know
3 how long it will take you to put that pen to paper so I can
4 enter that, but you have my general understanding of what would
5 be necessary. In essence, the material just shouldn't be
6 disclosed or used. OK?

7 Now, in connection with a briefing schedule, I
8 understand that you have this hearing on Friday. I was going
9 to suggest opposition papers due -- and I don't know whether
10 the parties have discussed a briefing schedule for the
11 underlying matter. Mr. Marks.

12 MR. MARKS: He had offered in his opposition papers 20
13 days. If your Honor wants to say 20 days from today, that
14 would be fine with us.

15 THE COURT: OK. I mean, I was going to say -- I am
16 going to say what I was going to say and then the parties
17 can -- I am amenable if more time is necessary. Opposition by
18 July 6th. Reply -- any reply will be due July 13th. And then
19 we would have a hearing on July 17th at 10 a.m. Obviously, I
20 didn't take into consideration that the parties are going to be
21 in Ohio on Friday and preparing for that, and I don't know
22 whether -- is that matter scheduled just for one day, the
23 hearing?

24 MR. MARKS: Yes, your Honor.

25 MR. POWER: Your Honor, the TRO was supposed to be in

F6mdhorc

1 place for 14 days. At the request of Mr. Marks, the Court set
2 the hearing on for this Friday instead of the following Monday.

3 THE COURT: OK.

4 MR. POWER: The parties can extend it. I know
5 Mr. Marks did say that he is going to need a lot of time to
6 brief the preliminary injunction issue, the receiver issue. So
7 it was Mr. Marks who requested to the Ohio Court that he was
8 going to need an ample amount of time.

9 I think under the briefing schedule that we know and
10 the statutory guidelines and the requirements for extending a
11 TRO are quite limited, but there is a lot of briefing that is
12 going to be going on during this time.

13 THE COURT: Sure. I guess my question is only do the
14 parties think they need a little bit more time with regard to
15 my schedule, you know, because I wasn't anticipating the other
16 proceeding going forward? Mr. Marks.

17 MR. MARKS: Your Honor, my understanding in Ohio is
18 that our motion to vacate the TRO will be heard by the
19 Magistrate Judge on Friday.

20 THE COURT: OK.

21 MR. MARKS: Given the briefing we will be on, we would
22 expect it will take the Magistrate Judge some time to issue her
23 report and recommendation. We would anticipate consenting to
24 extending TRO until the Magistrate Judge has had the
25 opportunity to rule.

F6mdhorc

1 THE COURT: OK.

2 MR. MARKS: So there will be from our perspective no
3 need for further briefing unless the Magistrate Judge wants it
4 after Friday. The preliminary injunction hearing, if it ever
5 gets to that stage, will be quite some time in the future.

6 THE COURT: OK.

7 MR. MARKS: We want to give the Magistrate Judge time
8 to be able to properly review the record and to make a
9 recommendation.

10 THE COURT: Sure.

11 MR. MARKS: So this schedule, your Honor -- the 6th,
12 the 13th and the 17th is certainly -- and we appreciate your
13 Honor making your Honor available on the 17th -- that's fine
14 with us.

15 THE COURT: OK. Mr. Power.

16 MR. POWER: You know, that's fine with us. I mean,
17 when are you away?

18 MR. BARRY: That is fine.

19 MR. POWER: That is fine, your Honor.

20 MR. COOPER: On your earlier ruling about the TRO, I
21 assume you meant all the material that they've gotten, not just
22 those limited to Mr. Symeou, correct?

23 THE COURT: That is all the material they have gotten
24 in connection with any subpoenas that they issued pursuant to
25 the order that I entered, yes.

F6mdhorc

1 MR. COOPER: OK. The other question I have is with
2 regard to the hearing, are you anticipating having live
3 testimony?

4 THE COURT: You know, I don't know at this stage. I
5 mean, I don't think so but I don't know. Because, you know,
6 although I am prepared for the limited purpose of today, I have
7 not looked through all the affidavits and materials that you
8 submitted. But I was not anticipating having live testimony.

9 I can let you know specifically by the end of the week
10 whether I -- I mean, I haven't seen the opposition papers, but
11 my initial reaction is no, that I wouldn't have.

12 MR. POWER: Your Honor, I think, recalling the
13 gravamen on the allegations in the TRO application, frankly, we
14 did bring a witness here because there were a lot of factual,
15 you know, this was done for nefarious purposes. I think, from
16 knowing the law, that the issue purely is, under Rule 45 and/or
17 27 and/or 1782, is notice required -- when is, if at all,
18 notice required to a potential defendant in a foreign action.
19 I think that probably doesn't require any witnesses from my
20 side.

21 THE COURT: All right. Let me ask this, Mr. Cooper,
22 was it your -- again, I indicated my view, but did you
23 anticipate -- did you want to have witnesses?

24 MR. COOPER: My belief is no. However, Mr. Power did
25 bring a witness and he proffered what that witness was going to

F6mdhorc

1 say when they started contemplating the Ohio arcs, etc., etc.
2 If you are going to get into fact issues like that, then we
3 would be entitled to some discovery about that, and we can't
4 have him come in unilaterally and say that. So I think it
5 could be done on the basis of legal issues in the papers. If
6 there are residual fact issues, perhaps at that point you can
7 stay the residual fact issues and have a hearing on the fact
8 issues with due notice.

9 THE COURT: Yes. I anticipate that the opposition
10 papers will deal with the legal issues, and to the extent there
11 is going to be an affidavit, it will be similar to the
12 affidavit submitted on behalf of your client. If the need
13 arises, I will let the parties know. You know, I probably have
14 to wait at least until I see the opposition papers.

15 And, obviously, Mr. Cooper, if once you see the
16 opposition papers you feel that an evidentiary hearing is
17 necessary, I will get the parties on the phone and I'll hear
18 you on that. But I think my initial view is that I would take
19 it on the papers. I would have specific questions for counsel
20 on the 17th, and make a ruling soon thereafter, if not on that
21 date. OK?

22 MR. COOPER: That is fine, your Honor.

23 THE COURT: All right.

24 MR. COOPER: Yes. Thank you.

25 MR. POWER: Yes.

F6mdhorc

1 THE COURT: Anything else, Mr. Power?

2 MR. POWER: No, your Honor. Thank you.

3 THE COURT: OK. Let me ask this. When do the parties
4 think they can be able to get me the protective order? I just
5 want to have something. I will put it in the docket so I have
6 a date.

7 MR. POWER: At the end of tomorrow.

8 MR. COOPER: You know, one thought I have on that,
9 your Honor, is I think it would be -- given the nature of this,
10 it would be important to have Mr. Shulman sign it and make the
11 representation, because there is no way of knowing -- you know,
12 I don't want to charge Mr. Power with knowing everything his
13 client did. I think it is important, given that he has
14 received this material, that he be a signatory to this.

15 MR. POWER: Your Honor, I would ask the same of
16 Mr. Kolomoisky and Mr. Bogolubov and Mr. Symeou and Mr. Korf.

17 MR. COOPER: I will be happy to do that if you provide
18 materials to us. If you provide materials to us, we will sign
19 it in short order, your Honor.

20 MR. POWER: Your Honor, I meant -- what I was going to
21 clarify is that those individuals have given Mr. Symeou any
22 sort of apparent authority to speak on their behalf.
23 Mr. Symeou is also not present in this district. Mr. Symeou is
24 a Cyprian resident. Suggesting that Mr. Korf needs to sign
25 something -- Mr. Shulman needs to sign something, I think it

F6mdhorc

1 goes beyond the level. But before that is determined, I can
2 perhaps have a statement from Mr. Shulman.

3 THE COURT: OK. Look, I don't think it is necessary
4 for the clients to sign a protective order. I think, counsel,
5 you need to communicate with it. I think the protective order
6 should indicate that it has been provided to the attorneys who
7 have an interest in the matter as well as to the client. OK?

8 MR. POWER: All right. We will even ask -- we will
9 confirm every person who has a look in our law firm, and, as I
10 said, we will state the names of the individuals who have even
11 had access or have been summarized this information.

12 THE COURT: Why don't you do this. Why don't you get
13 it to me by the end of the week. You obviously have other
14 things you are working on, but, if you can get it to me by
15 tomorrow, that's fine, but I will give you until the end of the
16 week.

17 Anything else, Mr. Power?

18 MR. POWER: No, your Honor.

19 THE COURT: Mr. Cooper?

20 MR. COOPER: No. Thank you, your Honor.

21 THE COURT: Mr. Marks?

22 MR. MARKS: No. Thank you, your Honor.

23 THE COURT: All right. Thank you.

24 - - -